



January 27, 2016

SENATE BILL No. 353

DIGEST OF SB 353 (Updated January 25, 2016 12:32 pm - DI 106)

Citations Affected: IC 4-6; IC 24-4.5; IC 24-12 .

Synopsis: Funding of lawsuits. Establishes a procedure by which a company may provide funding to the plaintiff in an action in exchange for the contingent right to receive a part of the potential proceeds of the action. Requires a company that offers funding to plaintiffs to register with the attorney general.

Effective: July 1, 2016.

Head, Young R Michael

January 11, 2016, read first time and referred to Committee on Civil Law.
January 26, 2016, reported favorably — Do Pass.

SB 353—LS 6199/DI 106



January 27, 2016

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 353

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-6-2-13 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2016]: **Sec. 13. The attorney general may adopt and enforce rules**
4 **under IC 4-22-2 that are necessary to carry out IC 24-12.**
5 SECTION 2. IC 24-4.5-1-202, AS AMENDED BY P.L.186-2015,
6 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2016]: Sec. 202. (a) As used in this section, "balloon
8 payment", with respect to a mortgage transaction, means any payment
9 that:
10 (1) the creditor requires the debtor to make at any time during the
11 term of the mortgage;
12 (2) represents the entire amount of the outstanding balance with
13 respect to the mortgage; and
14 (3) the entire amount of which is due as of a specified date or at
15 the end of a specified period;
16 if the aggregate amount of the minimum periodic payments required
17 under the mortgage would not fully amortize the outstanding balance

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by the specified date or at the end of the specified period. The term does not include a payment required by a creditor under a due-on-sale clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by a creditor under a provision in the mortgage that permits the creditor to accelerate the debt upon the debtor's default or failure to abide by the material terms of the mortgage.

(b) This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.

(2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).

(3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.

(4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.

(5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.

(6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

(7) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(8) An installment agreement for the purchase of home fuels in which a finance charge is not imposed.

(9) Loans made, insured, or guaranteed under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(10) Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(11) Except for IC 24-4.5-3-502.1(4), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:

(A) in compliance with the requirements of; and

(B) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;

the Indiana housing and community development authority established by IC 5-20-1-3.



(12) Except for IC 24-4.5-3-502.1(4), IC 24-4.5-3-503.3, IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

(13) The United States, any state or local government, or any agency or instrumentality of any governmental entity, including United States government sponsored enterprises.

(14) A bona fide nonprofit organization not operating in a commercial context, as determined by the director, if the following criteria are satisfied:

(A) Subject to clause (B), the organization originates only one

(1) or both of the following types of mortgage transactions:

(i) Zero (0) interest first lien mortgage transactions.

(ii) Zero (0) interest subordinate lien mortgage transactions.

(B) The organization does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (A).

(C) The organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(D) The organization's primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.

(E) The organization uses only:

(i) unpaid volunteers; or

(ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;

to originate the mortgage transactions described in clause (A).

(F) The organization does not charge loan origination fees in connection with the mortgage transactions described in clause (A).

(15) A bona fide nonprofit organization (as defined in section 301.5 of this chapter) if the following criteria are satisfied:

(A) For each calendar year that the organization seeks the exemption provided by this subdivision, the organization certifies, not later than December 31 of the preceding calendar year and on a form prescribed by the director and accompanied by such documentation as required by the director, that the organization is a bona fide nonprofit organization (as defined



in section 301.5(45) of this chapter).

(B) The director determines that the organization originates only mortgage transactions that are favorable to the debtor. For purposes of this clause, a mortgage transaction is favorable to the debtor if the director determines that the terms of the mortgage transaction are consistent with terms of mortgage transactions made in a public or charitable context, rather than in a commercial context.

(16) Civil justice funding (as defined in IC 24-12-1-1(3)) or a civil justice funding company (as defined in IC 24-12-1-1(4)).

SECTION 3. IC 24-12 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

ARTICLE 12. CIVIL JUSTICE FUNDING

Chapter 1. Definitions

Sec. 1. The following definitions apply throughout this article:

(1) "Advertise" means publishing or disseminating any written, electronic, or printed communication, or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a civil justice funding.

(2) "Charges" means the amount of money to be paid to a civil justice funding company by or on behalf of a consumer above the funded amount provided by or on behalf of the company to a consumer. The term includes all administrative, origination, underwriting, and other fees no matter how denominated.

(3) "Civil justice funding" means a nonrecourse transaction in which a civil justice funding company purchases and a consumer assigns to the company a contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim.

(4) "Civil justice funding company" or "company" means a person or entity that enters into a civil justice funding with a consumer. This term does not include the following:

(A) An immediate family member of the consumer.

(B) A bank, lender, financing entity, or other special purpose entity:



(i) that provides financing to a civil justice funding company; or

(ii) to which a civil justice funding company grants a security interest or transfers any rights or interest in a civil justice funding.

(C) An attorney or accountant who provides services to a consumer.

(5) "Consumer" means a natural person who has a pending legal claim and who:

(A) resides in Indiana; or

(B) has a legal claim in Indiana.

(6) "Funded amount" means the amount of money provided to, or on behalf of, the consumer in the civil justice funding. The term excludes charges.

(7) "Funding date" means the date on which the funded amount is transferred to the consumer by the civil justice funding company, by:

(A) personal delivery, wire, Automated Clearing House (ACH), or other electronic means; or

(B) insured, certified, or registered United States mail.

(8) "Immediate family member" means a:

(A) parent;

(B) sibling;

(C) child;

(D) spouse;

(E) grandparent; or

(F) grandchild.

(9) "Legal claim" means a bona fide civil claim or cause of action.

(10) "Resolution date" means the date the amount funded to the consumer, plus the agreed upon charges, are delivered to the civil justice funding company.

Chapter 2. Contract Requirements

Sec. 1. Every civil justice funding shall meet the following requirements:

(1) The contract shall be completely filled in when presented to the consumer for signature.

(2) The contract must contain, in bold and boxed type, a right of rescission, allowing the consumer to cancel the contract without penalty or further obligation if, not later than five (5) business days after the funding date, the consumer either:

(A) returns to the civil justice funding company the full



amount of the disbursed funds by delivering the company's uncashed check to the company's office in person; or (B) mails, by insured, certified, or registered United States mail, to the address specified in the contract, a notice of cancellation and includes in the mailing a return of the full amount of disbursed funds in the form of the company's uncashed check or a registered or certified check or money order.

(3) The contract must contain the initials of the consumer on each page.

Chapter 3. Civil Justice Funding Company Prohibitions

Sec. 1. A civil justice funding company may not do any of the following:

(1) Pay or offer to pay a commission, referral fee, or other form of consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees for referring a consumer to the company.

(2) Accept a commission, referral fee, rebate, or other form of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees.

(3) Intentionally advertise materially false or misleading information regarding the civil justice funding company's products or services.

(4) Refer, in furtherance of an initial legal funding, a customer or potential customer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees. However, if a customer needs legal representation, the company may refer the customer to a local or state bar association referral service.

(5) Knowingly provide funding to a consumer who has previously assigned or sold a part of the consumer's right to proceeds from the consumer's legal claim without first making payment to or purchasing a prior unsatisfied civil justice funding company's entire funded amount and contracted charges, unless a lesser amount is otherwise agreed to in writing by the civil justice funding company. However, multiple companies may agree to provide funding to a consumer simultaneously if the consumer and the consumer's attorney consent to the arrangement in writing.

(6) Receive any right to make any decision with respect to the conduct of the underlying legal claim or any settlement or resolution of the claim, or make any decision with respect to



the conduct of the underlying legal claim or any settlement or resolution of the claim. The right to make these decisions remains solely with the consumer and the attorney in the legal claim.

(7) Knowingly pay or offer to pay for court costs, filing fees, or attorney's fees either during or after the resolution of the legal claim, using funds from the civil justice funding transaction.

Chapter 4. Contracted Amounts

Sec. 1. A civil justice funding company shall require the contracted amount payable to the company to be set as a predetermined amount based upon intervals of time from the funding date through the resolution date and not be determined as a percentage of the recovery from the legal claim.

Chapter 5. Disclosures

Sec. 1. All civil justice funding contracts must contain the disclosures specified in this section, which are material terms of the contract. Unless otherwise specified, the disclosures must be in at least a 12 point bold font and be placed clearly and conspicuously within the contract. The following disclosures are required:

(1) On the front page, under appropriate headings, language specifying:

(A) the funded amount to be paid to the consumer by the civil justice funding company;

(B) an itemization of one (1) time charges;

(C) the total amount to be assigned by the consumer to the company, including the funded amount and all charges; and

(D) a payment schedule including the funded amount and all charges, listing all dates and the amount due at the end of each one hundred eighty (180) day period, from the funding date until the date on which the maximum amount due to the company by the consumer occurs.

(2) A notice within the body of the contract stating the following: "Consumer's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days after the funding date if you either:

(A) return to the civil justice funding company the full amount of the disbursed funds by delivering the company's uncashed check to the company's office in person; or

(B) mail, by insured, certified, or registered United States



1 mail, to the company at the address specified in the
2 contract, a notice of cancellation and include in the mailing
3 a return of the full amount of disbursed funds in the form
4 of the company's uncashed check or a registered or
5 certified check or money order."

6 (3) A notice informing the consumer that the civil justice
7 funding company has no role in deciding whether, when, and
8 how much the legal claim is settled for. However, the
9 consumer and consumer's attorney must notify the company
10 of the outcome of the legal claim by settlement or adjudication
11 before the resolution date. The company may seek updated
12 information about the status of the legal claim but in no event
13 may the company interfere with the independent professional
14 judgment of the attorney in the handling of the legal claim or
15 any settlement.

16 (4) Within the body of the contract, in all capital letters in at
17 least a 12 point bold font contained within a box the following:
18 "THE FUNDED AMOUNT AND AGREED UPON
19 CHARGES SHALL BE PAID ONLY FROM THE
20 PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE
21 PAID ONLY TO THE EXTENT THAT THERE ARE
22 AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM.
23 YOU WILL NOT OWE (INSERT NAME OF THE CIVIL
24 JUSTICE FUNDING COMPANY) ANYTHING IF THERE
25 ARE NO PROCEEDS FROM YOUR LEGAL CLAIM,
26 UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM
27 OF THIS CONTRACT OR YOU HAVE COMMITTED
28 FRAUD AGAINST THE CIVIL JUSTICE FUNDING
29 COMPANY."

30 (5) Located immediately above the place on the contract
31 where the consumer's signature is required, in at least a 12
32 point bold font the following: "Do not sign this contract
33 before you read it completely or if the contract contains any
34 blank spaces. You are entitled to a completely filled in copy of
35 the contract. Before you sign this contract, you should obtain
36 the advice of an attorney. Depending on the circumstances,
37 you may want to consult a tax, public or private benefits
38 planning, or financial professional. You acknowledge that
39 your attorney in the legal claim has provided no tax, public or
40 private benefit planning, or financial advice regarding this
41 transaction."

42 Chapter 6. Violations



1 **Sec. 1.** This article does not restrict the exercise of powers or the
2 performance of the duties of the attorney general.

3 **Sec. 2.** If a court with jurisdiction determines that a civil justice
4 funding company has intentionally violated the provisions of this
5 article with regard to a specific civil justice funding, the civil
6 justice funding company is entitled to recover only the funded
7 amount provided to the consumer in that civil justice funding and
8 is not entitled to any additional charges.

9 **Chapter 7. Assignability**

10 **Sec. 1.** A consumer may assign the contingent right to receive an
11 amount of the potential proceeds of a legal claim.

12 **Sec. 2.** This article may not be construed to cause any civil
13 justice funding transaction that complies with this article to be
14 considered a loan or to be otherwise subject to any other provisions
15 of Indiana law governing loans. Notwithstanding any other law, a
16 civil justice funding transaction that complies with this article is
17 not subject to any other statutory or regulatory provisions
18 governing loans or investment contracts. To the extent that this
19 article conflicts with any other law, this article supersedes the
20 other law for the purposes of regulating civil justice fundings.

21 **Sec. 3.** Only attorney's liens related to the legal claim or
22 Medicare or other statutory liens related to the legal claim take
23 priority over a lien of the civil justice funding company. All other
24 liens take priority by normal operation of law.

25 **Chapter 8. Attorney Prohibitions**

26 **Sec. 1.** An attorney or law firm retained by the consumer in the
27 legal claim may not have a financial interest in the civil justice
28 funding company offering civil justice funding to that consumer.
29 Additionally, any attorney who has referred the consumer to the
30 consumer's retained attorney may not have a financial interest in
31 the civil justice funding company offering civil justice funding to
32 that consumer.

33 **Chapter 9. Privileged Communication**

34 **Sec. 1.** No communication between the consumer's attorney in
35 the legal claim and the civil justice funding company with respect
36 to the civil justice funding limits, waives, or abrogates the scope or
37 nature of any statutory or common law privilege, including the
38 work product doctrine and the attorney client privilege.

39 **Chapter 10. Registration**

40 **Sec. 1.** A civil justice funding company may not engage in the
41 business of civil justice funding unless the company has registered
42 with the attorney general in accordance with this chapter.



1 **Sec. 2. A civil justice funding company application and**
2 **registration form must be filed in the manner prescribed by the**
3 **attorney general and must contain the information the attorney**
4 **general requires to make an evaluation of the character and fitness**
5 **of the applicant company. The initial application must be**
6 **accompanied by a one thousand five hundred dollar (\$1,500) fee.**
7 **A renewal registration must include a five hundred dollar (\$500)**
8 **fee. A registration must be renewed every two (2) years and expires**
9 **on September 30.**

10 **Sec. 3. A certificate of registration may not be issued unless the**
11 **attorney general, upon investigation, finds that the character and**
12 **fitness of the applicant company, and of the officers and directors**
13 **of the company, are sufficient to warrant belief that the business**
14 **will be operated honestly and fairly.**

15 **Sec. 4. Every registrant shall also, at the time of filing an**
16 **application, file with the attorney general, if required by the**
17 **attorney general, a bond satisfactory to the attorney general in an**
18 **amount not to exceed fifty thousand dollars (\$50,000). Instead of**
19 **the bond, at the option of the registrant, the registrant may post an**
20 **irrevocable letter of credit. The terms of the bond must run**
21 **concurrently with the period during which the registration will be**
22 **in effect. The bond must provide that the registrant will faithfully**
23 **follow the law.**

24 **Sec. 5. (a) Upon written request, the applicant is entitled to a**
25 **hearing on the question of the applicant's qualifications for a**
26 **registration if:**

- 27 **(1) the attorney general has notified the applicant in writing**
28 **that the application has been denied; or**
29 **(2) the attorney general has not issued a registration within**
30 **sixty (60) days after the application for the registration was**
31 **filed.**

32 **(b) A request for a hearing may not be made more than fifteen**
33 **(15) days after the attorney general has mailed a written notice to**
34 **the applicant that the application has been denied and described in**
35 **substance the attorney general's findings supporting denial of the**
36 **application.**

37 **Sec. 6. A civil justice funding company that applies for**
38 **registration with the attorney general after June 30, 2016, and**
39 **before January 1, 2017, may engage in civil justice funding while**
40 **the company's registration is waiting approval by the attorney**
41 **general. However, if the attorney general denies the civil justice**
42 **funding company's application under this chapter, the person may**



1 not enter into, or offer to enter into, any new civil justice funding
2 transaction during the period beginning on the effective date of the
3 attorney general's denial under this section, and ending on the
4 effective date of any certificate of registration subsequently issued
5 to the person by the attorney general under this chapter, subject to
6 the person's right to a review under section 5 of this chapter and
7 to any right to a stay or an appeal of the denial available under
8 IC 4-21.5. Any civil justice funding agreement entered into before
9 July 1, 2016, is not subject to this article.

10 Sec. 7. A civil justice funding company may not use any form of
11 civil justice funding contract in Indiana unless the contract has
12 been filed with the attorney general in accordance with the filing
13 procedures set forth by the attorney general.

14 Sec. 8. Fees collected under this chapter shall be deposited in the
15 electronic and enhanced access fund established by IC 4-5-10-5.

16 Sec. 9. The attorney general may adopt rules under IC 4-22-2 to
17 implement this article.



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 353, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 353 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 0

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